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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,680	09/28/2001	James R. Hornsby	6881.03	5486

42173 7590 03/08/2005

LAW OFFICE OF RICHARD B. KLAR  
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EXAMINER

SUHOL, DMITRY

ART UNIT PAPER NUMBER

3714

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/966,680

**Applicant(s)**

HORNSBY ET AL.

**Examiner**

Dmitry Suhol

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 22-38 is/are pending in the application.
- 4a) Of the above claim(s) 28-31 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25-27 and 32-36 is/are allowed.
- 6) ☒ Claim(s) 22-24, 37 and 38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Terminal Disclaimer***

The terminal disclaimer filed on December 20<sup>th</sup>, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent resulting from application 09/931570 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Election/Restrictions***

This application contains claims 28-31 drawn to an invention nonelected without traverse in Applicants Response dated 3/22/2004. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-23 and 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Li et al '223 in view of Wooley et al '791. Li discloses an amusement device containing all of the elements of the claims including a body (fig. 20, element A)

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as required by claims 22 and 37, features carried by a body at least some of the features comprising at least one transport element moveably connected to the body or at least two arms moveably connected to the body (movable elements coupled to a motor described in col. 7, lines 50-64) (fig. 20, elements B) as required by claim 22, a means for powering a device and some features carried by the body (col. 4, lines 22-26) as required by claim 22, a card reader carried by the body (data card reader and col. 7, lines 59-64 and fig. 20, element 210) as required by claim 22 and 37, a microprocessor operably coupled to a means for powering, a card reader and motor (fig. 17, element 25 and col. 5, lines 21-23) as required by claims 22 and 37. An information card, as required by claim 23, is shown in figure 1 as element 10 and described in col. 7, lines 59-64 with the card game information and device actuation information shown in figure 1 as picture information and data information 12. A motor associated with the body, as required by claim 37, is shown as element 62 in figure 20. At least two movable elements, as required by claim 37, are shown as elements (B) where it is considered that the arms or legs of the device are reconfigurable to a different position in which case the device is transformed. At least two couplings, as required by claim 38, are inherent in the device since with out the coupling the movable elements would not be retained on the body nor would they be movable as intended (col. 7, lines 50-56).

Li lacks a teaching of a card reader being of a swipe card type. However, Wooley discloses a swipe card reader used to synthesize commands for generating speech or sound in a variety of devices including games (col. 1, lines 25-31 and col. 2, lines 3-7). Therefore it would have been obvious to incorporate a swipe card reader for the card

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reader of Li for the purpose of providing an improved data storage and retrieval system which controls voice or sound synthesizer, especially since one of the uses of the cards of Li is for the generation of sound.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Li et al '223 and Wooley et al '791, as stated above, and further in view of Mowrer et al '716. Li, as modified by Wooley, fails to explicitly teach armor configured to be attachable to a body, as required by claim 24. However, Mowrer discloses a sound producing amusement device which can be embodied as any type of figure which teaches that it is known to provide armor which is attachable to the body of the device (col. 2, lines 61-63). Therefore it would have been obvious to incorporate armor attachable to a body portion with the device of Li, as modified by Wooley, for the purpose of adding a variety of ornamental surface details and interest to the user.

#### ***Allowable Subject Matter***

Claims 25-27 and 32-36 are allowed.

#### ***Response to Arguments***

Applicant's arguments filed December 20<sup>th</sup>, 2004 have been fully considered but they are not persuasive. Applicants argue that the claims as amended are no longer anticipated by Wooley '791. The examiner agrees and withdraws the associated rejection. Applicants further appear to argue that the combination of Li and Wooley fails

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to teach all of the claimed limitations since Li lacks sufficient detail to enable the functionality of his invention, and since Wooley also fails to teach a swipe card reader "involved in powering or actuating moveable features or moveable elements" of the amusement device. In response the examiner points out that Li clearly discloses most of the features of the claims, as stated above and in the previous office action, while Wooley is relied upon to teach the use of a card swipe reader in a device like that of Li for improved data storage and retrieval system which controls voice or sound synthesizer. Thus the combination of the two references clearly obviates applicants claims, as stated above.

Applicants arguments with respect to claims 27 and 36 are convincing (i.e. the combination of Kelly and Broadfield fails to produce an amusement device in which the swipe card reader actuates a motor of an amusement device to launch a launch element. Therefore the rejection with respect to claims 27 and 36 has been withdrawn.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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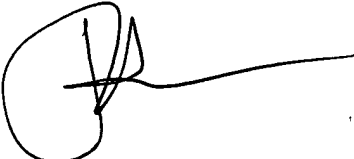
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Suhol whose telephone number is 571-272-4430. The examiner can normally be reached on Mon - Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jessica Harrison can be reached on 571-272-4449. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line extending to the right.

JESSICA HARRISON  
PRIMARY EXAMINER